



APPLICANT'S RESPONSE TO  
OFFICE ACTION SUMMARY

Application #	10/622,172
Confirmation #	
Filing Date	
First Inventor	Shapiro
Art Unit	3618
Examiner	Bridget Avery
Docket #	

Commissioner for Patents  
Washington, D.C.

SIR:

**APPLICANT'S RESPONSE**

This is responsive to the office action summary of the examiner with a mailing date on or about March 18, 2005.

**RESPONSE TO ELECTION/RESTRICTIONS**

Applicant hereby elects species I (Figures 1 - 4) as specified by the examiner. For purpose of a response, applicant suggests that species I, species II and species III (as articulated by the examiner) are all patentably distinct. However, applicant asserts that the present set of claims have a generic claim as to all these species.

As suggested by the examiner based on the election of species I above, applicant elects sub-species I relating to the support structures (Figure 5). Applicant notes that the examiner has articulated sub-species I and sub-species II (Figures 5 & Figures 5A respectively). Applicant suggests that Figure 5 and Figure 5A are obvious variants and that the two sub-species are not

patentably distinct.

The examiner has further requested that applicant select a handle structure from examiner's sub-species III (Figure 6), sub-species IV (Figure 7) and/or sub-species V (Figure 8). Applicant elects sub-species III (Figure 6) for purposes of examination. With regard to these handle structures, applicant submits that Figure 6 (sub-species III) is patentably distinct from Figures 7 & 8 handle structures, but that Figures 7 & 8 show obvious variants of each other.

Overall, applicant requests examination of claims 46 - 105 under the present state of the application, and applicant submits that the very first claim is a generic claim that supports the application despite any election and restriction requirement.

Applicant notes for purposes of the examiner's convenience that a continuation in part application has been filed with the U.S. Patent office relating to this application. See Application 10/891,030.

Respectfully submitted,

Date: 4-13-05

  
RICHARD N. SHAPIRO (APPLICANT)  
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MAILING CERTIFICATION

I hereby certify that the foregoing Applicant's Response is being deposited in the mail via the U.S. Postal System on April 13, 2005.

  
Richard N. Shapiro



## UNITED STATES PATENT AND TRADEMARK OFFICE

OCT 26 2005  
PATENT & TRADEMARK OFFICE  
USPTO

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

RICHARD N. SHAPIRO  
C/O HAJEK SHAPIRO COOPER & LEWIS  
1294 DIAMOND SPRINGS ROAD  
VIRGINIA BEACH, VA 23455

COPY MAILED

OCT 14 2005

OFFICE OF PETITIONS

In re Application of :  
Richard N. Shapiro :  
Application No. 10/622,172 :  
Filed: July 18, 2003 :  
Attorney Docket No. P06288US07/RFH :

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(b), filed October 5, 2005 and resubmitted on October 7, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." Petitioner is advised that this is **not** a final agency action decision.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed March 29, 2005, which set a shortened statutory period for reply of thirty (30) days. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on April 28, 2005.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply

from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks items (1) and (3) above.

As to item (1), A petition to revive cannot be granted where there is an outstanding requirement.

In the instant case, there was no response to the outstanding official action submitted. Accordingly, the petition to revive cannot be granted until such time as the outstanding response requirement is received.

As to item (3), petitioner must submit a statement that the entire delay in filing the required reply from the due date for the reply until of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

Petitioner alleging that a response was sent to the Office on April 13, 2005. The Office has no record of the response having been filed on or about that date. If petitioner wishes to pursue this argument with any renewed petition, then petitioner must provide proof that the response was sent to the Office on or about that date in the form of a stamped postcard receipt itemizing the response or an Express Mail label indicating that the response for the instant application was deposited with the United States Postal Service on or about that date. MPEP 503, 37 CFR 1.10.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                    Mail Stop PETITIONS  
                                  Commissioner for Patents  
                                  Post Office Box 1450  
                                  Alexandria, VA 22313-1450

By hand:                    Customer Service Window  
                                  Randolph Building  
                                  401 Dulany Street  
                                  Alexandria, VA 22314

By fax:                     (571) 273-8300

Telephone inquiries concerning this decision should be directed to Wan Laymon at (571) 272-3220.

  
Wan Laymon  
Petitions Examiner  
Office of Petitions



APPLICANT'S PETITION TO REVIVE	Application #	10/622,172
	Confirmation #	unknown
	Filing Date	July 18, 2003
	First Inventor	Shapiro
	Art Unit	3618
	Examiner	Bridget Avery
	Docket #	unknown

Commissioner for Patents  
Washington, D.C.

SIR:

Applicant moves to revive patent application serial number 10/622,172, and states as grounds therefore the following:

1. Applicant filed this patent application with the U.S. Patent office on July 18, 2003.
2. Applicant diligently moved forward on the application by filing a preliminary amended set of claims on June 23, 2004, before any substantive office action.
3. The U.S. Patent office first responded substantively on March 18, 2005 with an election/restriction requirement.
4. This filing required applicant to respond within 90 days.
5. Applicant drafted a response to the election/restriction requirement setting forth applicant's position on the election and restriction requirement and signed the mailing certificate dated April 13, 2005 believing that the response had been filed with the U.S. Patent & Trademark office in the proper fashion.
6. There was no further action by applicant or the U.S. Patent office until applicant was on a telephone conference with Bridget Avery, the assigned examiner with Art Unit 3618, during September 2005. Examiner Avery asked the applicant why he had not responded to this election restriction requirement, and applicant was taken by surprise, believing he had filed the election in April 2005. This conversation took place during September 2005.
7. Applicant immediately checked his records and located the response, attached as Exhibit A, dated April 13, 2005 which applicant believed had been filed in proper fashion. Applicant mistakenly was waiting for the U.S. Patent office to respond, but the U.S. Patent office does not show

receipt of the applicant's response dated April 13, 2005 which applicant believes was mailed.

8. During April 2005, the United States Patent office moved. Applicant does not have an actual filing receipt showing fax or registered mail of this filing, but applicant moves to revive this application believing that the abandonment of this application arose through inadvertence.
9. Applicant also had no warning from the U.S. Patent office of the abandonment, and in fact believed that he had properly filed the April 13, 2005 response attached hereto as Exhibit A.
10. Accordingly, your applicant moves the U.S. Patent office to revive this application and to accord plaintiff the original filing date due to the inadvertence involved in the abandonment occurring in this case.
11. Applicant hereby disclaims any extension of the patent term, if granted, and waives any such term.
12. Applicant meets the small entity status definition and has enclosed the required fees.

WHEREFORE, the applicant moves the U.S. Patent office to revive said application.

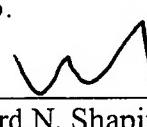
Respectfully submitted,

Date: 10-3-2005

  
RICHARD N. SHAPIRO (APPLICANT)  
1294 Diamond Springs Road  
Virginia Beach, Virginia 23455  
757-460-7776; Facsimile: 757-460-3428  
[rshapiro@hsinjurylaw.com](mailto:rshapiro@hsinjurylaw.com)

#### MAILING CERTIFICATION

I hereby certify that the foregoing amendment application is being deposited in the mail via the U.S. Postal System on October 3, 2005.

  
Richard N. Shapiro



PANCAKE WHEEL LLC 08/04  
1294 DIAMOND SPRINGS ROAD  
VIRGINIA BEACH, VA 23455

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Commissioner of Patents and Trademark Office

9-30-05

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U.S. PATENT &  
TRADEMARK  
OFFICE

Seven hundred fifty dollars & no ~~00~~ DOLLARS A

Legal Partner

TOWNE BANK

5716 HIGH STREET WEST  
PONTEMBON, VA 23703

HOR 10/6/22, 172 Jee

1042

MJ

MP



### Notice of Abandonment

Application No.	Applicant(s)
10/622,172	SHAPIRO, RICHARD N.
Examiner	Art Unit
Bridget Avery	3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1.  Applicant's failure to timely file a proper reply to the Office letter mailed on 29 March 2005.
  - (a)  A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b)  A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c)  A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d)  No reply has been received.
  
2.  Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a)  The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b)  The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c)  The issue fee and publication fee, if applicable, has not been received.
  
3.  Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a)  Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b)  No corrected drawings have been received.
  
4.  The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
  
5.  The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
  
6.  The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
  
7.  The reason(s) below:

*Bridget Avery*  
**BRIDGET AVERY**  
**PATENT EXAMINER** 9/28/05

*Christopher P. Ellis*  
**CHRISTOPHER P. ELLIS**  
 CERTIFIED PATENT EXAMINER  
 TECHNOLOGY CENTER 2600

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.



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October 21, 2005

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RE: Serial No. 10/622,172

Dear Sir or Madam:

Please find enclosed Applicant's Request for Reconsideration of Petition to Revive in the above-referenced matter.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

  
Richard N. Shapiro

RNS/bmg